

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1865

AN ACT

To repeal section 143.451, RSMo, and to enact in lieu thereof two new sections relating to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Section 143.451, RSMo, is repealed and two new
2 sections enacted in lieu thereof, to be known as sections 143.451
3 and 144.055, to read as follows:

4 143.451. 1. Missouri taxable income of a corporation shall
5 include all income derived from sources within this state.

6 2. A corporation described in subdivision (1) of subsection
7 1 of section 143.441 shall include in its Missouri taxable income
8 all income from sources within this state, including that from
9 the transaction of business in this state and that from the
10 transaction of business partly done in this state and partly done
11 in another state or states. However:

12 (1) Where income results from a transaction partially in
13 this state and partially in another state or states, and income
14 and deductions of the portion in the state cannot be segregated,
15 then such portions of income and deductions shall be allocated in
16 this state and the other state or states as will distribute to
17 this state a portion based upon the portion of the transaction in

1 this state and the portion in such other state or states.

2 (2) The taxpayer may elect to compute the portion of income
3 from all sources in this state in the following manner, or the
4 manner set forth in subdivision (3) of this subsection:

5 (a) The income from all sources shall be determined as
6 provided, excluding therefrom the figures for the operation of
7 any bridge connecting this state with another state.

8 (b) The amount of sales which are transactions wholly in
9 this state shall be added to one-half of the amount of sales
10 which are transactions partly within this state and partly
11 without this state, and the amount thus obtained shall be divided
12 by the total sales or in cases where sales do not express the
13 volume of business, the amount of business transacted wholly in
14 this state shall be added to one-half of the amount of business
15 transacted partly in this state and partly outside this state and
16 the amount thus obtained shall be divided by the total amount of
17 business transacted, and the net income shall be multiplied by
18 the fraction thus obtained, to determine the proportion of income
19 to be used to arrive at the amount of Missouri taxable income.
20 The investment or reinvestment of its own funds, or sale of any
21 such investment or reinvestment, shall not be considered as sales
22 or other business transacted for the determination of said
23 fraction.

24 (c) For the purposes of this subdivision, a transaction
25 involving the sale of tangible property is:

26 a. "Wholly in this state" if both the seller's shipping
27 point and the purchaser's destination point are in this state;

28 b. "Partly within this state and partly without this state"

1 if the seller's shipping point is in this state and the
2 purchaser's destination point is outside this state, or the
3 seller's shipping point is outside this state and the purchaser's
4 destination point is in this state;

5 c. Not "wholly in this state" or not "partly within this
6 state and partly without this state" only if both the seller's
7 shipping point and the purchaser's destination point are outside
8 this state.

9 (d) For purposes of this subdivision:

10 a. The purchaser's destination point shall be determined
11 without regard to the FOB point or other conditions of the sale;
12 and

13 b. The seller's shipping point is determined without regard
14 to the location of the seller's principle office or place of
15 business.

16 (3) The taxpayer may elect to compute the portion of income
17 from all sources in this state in the following manner:

18 (a) The income from all sources shall be determined as
19 provided, excluding therefrom the figures for the operation of
20 any bridge connecting this state with another state;

21 (b) The amount of sales which are transactions in this
22 state shall be divided by the total sales, and the net income
23 shall be multiplied by the fraction thus obtained, to determine
24 the proportion of income to be used to arrive at the amount of
25 Missouri taxable income. The investment or reinvestment of its
26 own funds, or sale of any such investment or reinvestment, shall
27 not be considered as sales or other business transacted for the
28 determination of said fraction;

1 (c) For the purposes of this subdivision, a transaction
2 involving the sale of tangible property is:

3 a. "In this state" if the purchaser's destination point is
4 in this state;

5 b. Not "in this state" if the purchaser's destination point
6 is outside this state;

7 (d) For purposes of this subdivision, the purchaser's
8 destination point shall be determined without regard to the FOB
9 point or other conditions of the sale and shall not be in this
10 state if the purchaser received the tangible personal property
11 from the seller in this state for delivery to the purchaser's
12 location outside this state;

13 (e) For the purposes of this subdivision, a transaction
14 involving the sale other than the sale of tangible property is
15 "in this state" if the taxpayer's market for the sales is in this
16 state. The taxpayer's market for sales is in this state:

17 a. In the case of sale, rental, lease, or license of real
18 property, if and to the extent the property is located in this
19 state;

20 b. In the case of rental, lease, or license of tangible
21 personal property, if and to the extent the property is located
22 in this state;

23 c. In the case of sale of a service, if and to the extent
24 the benefit of the service is delivered to a purchaser location
25 in this state; and

26 d. In the case of intangible property:

27 (i) That is rented, leased, or licensed, if and to the
28 extent the property is used in this state by the rentee, lessee,

1 or licensee, provided that intangible property utilized in
2 marketing a good or service to a consumer is "used in this state"
3 if that good or service is purchased by a consumer who is in this
4 state. Franchise fees or royalties received for the rent, lease,
5 license, or use of a trade name, trademark, service mark, or
6 franchise system or provides a right to conduct business activity
7 in a specific geographic area are "used in this state" to the
8 extent the franchise location is in this state; and

9 (ii) That is sold, if and to the extent the property is
10 used in this state, provided that:

11 i. A contract right, government license, or similar
12 intangible property that authorizes the holder to conduct a
13 business activity in a specific geographic area is "used in this
14 state" if the geographic area includes all or part of this state;

15 ii. Receipts from intangible property sales that are
16 contingent on the productivity, use, or disposition of the
17 intangible property shall be treated as receipts from the rental,
18 lease, or licensing of such intangible property under item (i) of
19 this subparagraph; and

20 iii. All other receipts from a sales of intangible
21 property shall be excluded from the numerator and denominator of
22 the sales factor;

23 (f) If the state or states of assignment under paragraph
24 (e) of this subdivision cannot be determined, the state or states
25 of assignment shall be reasonably approximated;

26 (g) If the state of assignment cannot be determined under
27 paragraph (e) of this subdivision or reasonably approximated
28 under paragraph (f) of this subdivision, such sales shall be

1 excluded from the denominator of the sales factor;

2 (h) The director may prescribe such rules and regulations
3 as necessary or appropriate to carry out the purposes of this
4 section.

5 (4) For purposes of this subsection, the following words
6 shall, unless the context otherwise requires, have the following
7 meaning:

8 (a) "Administration services" include, but are not limited
9 to, clerical, fund or shareholder accounting, participant record
10 keeping, transfer agency, bookkeeping, data processing,
11 custodial, internal auditing, legal and tax services performed
12 for an investment company;

13 (b) "Affiliate", the meaning as set forth in 15 U.S.C.
14 Section 80a-2(a)(3)(C), as may be amended from time to time;

15 (c) "Distribution services" include, but are not limited
16 to, the services of advertising, servicing, marketing,
17 underwriting or selling shares of an investment company, but, in
18 the case of advertising, servicing or marketing shares, only
19 where such service is performed by a person who is, or in the
20 case of a closed end company, was, either engaged in the services
21 of underwriting or selling investment company shares or
22 affiliated with a person that is engaged in the service of
23 underwriting or selling investment company shares. In the case
24 of an open end company, such service of underwriting or selling
25 shares must be performed pursuant to a contract entered into
26 pursuant to 15 U.S.C. Section 80a-15(b), as from time to time
27 amended;

28 (d) "Investment company", any person registered under the

1 federal Investment Company Act of 1940, as amended from time to
2 time, (the act) or a company which would be required to register
3 as an investment company under the act except that such person is
4 exempt to such registration pursuant to Section 80a-3(c)(1) of
5 the act;

6 (e) "Investment funds service corporation" includes any
7 corporation or S corporation doing business in the state which
8 derives more than fifty percent of its gross income in the
9 ordinary course of business from the provision directly or
10 indirectly of management, distribution or administration services
11 to or on behalf of an investment company or from trustees,
12 sponsors and participants of employee benefit plans which have
13 accounts in an investment company. An investment funds service
14 corporation shall include any corporation or S corporation
15 providing management services as an investment advisory firm
16 registered under Section 203 of the Investment Advisors Act of
17 1940, as amended from time to time, regardless of the percentage
18 of gross revenues consisting of fees from management services
19 provided to or on behalf of an investment company;

20 (f) "Management services" include but are not limited to,
21 the rendering of investment advice directly or indirectly to an
22 investment company making determinations as to when sales and
23 purchases of securities are to be made on behalf of the
24 investment company, or the selling or purchasing of securities
25 constituting assets of an investment company, and related
26 activities, but only where such activity or activities are
27 performed:

28 a. Pursuant to a contract with the investment company

1 entered into pursuant to 15 U.S.C. Section 80a-15(a), as from
2 time to time amended;

3 b. For a person that has entered into such contract with
4 the investment company; or

5 c. For a person that is affiliated with a person that has
6 entered into such contract with an investment company;

7 (g) "Qualifying sales", gross income derived from the
8 provision directly or indirectly of management, distribution or
9 administration services to or on behalf of an investment company
10 or from trustees, sponsors and participants of employee benefit
11 plans which have accounts in an investment company. For purposes
12 of this section, "gross income" is defined as that amount of
13 income earned from qualifying sources without deduction of
14 expenses related to the generation of such income;

15 (h) "Residence", presumptively the fund shareholder's
16 mailing address on the records of the investment company. If,
17 however, the investment company or the investment funds service
18 corporation has actual knowledge that the fund shareholder's
19 primary residence or principal place of business is different
20 than the fund shareholder's mailing address such presumption
21 shall not control. To the extent an investment funds service
22 corporation does not have access to the records of the investment
23 company, the investment funds service corporation may employ
24 reasonable methods to determine the investment company fund
25 shareholder's residence.

26 (5) Notwithstanding other provisions of law to the
27 contrary, qualifying sales of an investment funds service
28 corporation, or S corporation, shall be considered wholly in this

1 state only to the extent that the fund shareholders of the
2 investment companies, to which the investment funds service
3 corporation, or S corporation, provide services, are resided
4 in this state. Wholly in this state qualifying sales of an
5 investment funds service corporation, or S corporation, shall be
6 determined as follows:

7 (a) By multiplying the investment funds service
8 corporation's total dollar amount of qualifying sales from
9 services provided to each investment company by a fraction, the
10 numerator of which shall be the average of the number of shares
11 owned by the investment company's fund shareholders resided in
12 this state at the beginning of and at the end of the investment
13 company's taxable year that ends with or within the investment
14 funds service corporation's taxable year, and the denominator of
15 which shall be the average of the number of shares owned by the
16 investment company's fund shareholders everywhere at the
17 beginning of and at the end of the investment company's taxable
18 year that ends with or within the investment funds service
19 corporation's taxable year;

20 (b) A separate computation shall be made to determine the
21 wholly in this state qualifying sales from each investment
22 company. The qualifying sales for each investment company shall
23 be multiplied by the respective percentage of each fund, as
24 calculated pursuant to paragraph (a) of this subdivision. The
25 product of this equation shall result in the wholly in this state
26 qualifying sales. The qualifying sales for each investment
27 company which are not wholly in this state will be considered
28 wholly without this state;

1 (c) To the extent an investment funds service corporation
2 has sales which are not qualifying sales, those nonqualified
3 sales shall be apportioned to this state based on the methodology
4 utilized by the investment funds service corporation without
5 regard to this subdivision.

6 3. Any corporation described in subdivision (1) of
7 subsection 1 of section 143.441 organized in this state or
8 granted a permit to operate in this state for the transportation
9 or care of passengers shall report its gross earnings within the
10 state on intrastate business and shall also report its gross
11 earnings on all interstate business done in this state which
12 report shall be subject to inquiry for the purpose of determining
13 the amount of income to be included in Missouri taxable income.
14 The previous sentence shall not apply to a railroad.

15 4. A corporation described in subdivision (2) of subsection
16 1 of section 143.441 shall include in its Missouri taxable income
17 all income arising from all sources in this state and all income
18 from each transportation service wholly within this state, from
19 each service where the only lines of such corporation used are
20 those in this state, and such proportion of revenue from each
21 service where the facilities of such corporation in this state
22 and in another state or states are used, as the mileage used over
23 the lines of such corporation in the state shall bear to the
24 total mileage used over the lines of such corporation. The
25 taxpayer may elect to compute the portion of income from all
26 sources within this state in the following manner:

27 (1) The income from all sources shall be determined as
28 provided;

1 (2) The amount of investment of such corporation on
2 December thirty-first of each year in this state in fixed
3 transportation facilities, real estate and improvements, plus the
4 value on December thirty-first of each year of any fixed
5 transportation facilities, real estate and improvements in this
6 state leased from any other railroad shall be divided by the sum
7 of the total amount of investment of such corporation on December
8 thirty-first of each year in fixed transportation facilities,
9 real estate and improvements, plus the value on December
10 thirty-first of each year, of any fixed transportation
11 facilities, real estate and improvements leased from any other
12 railroad. Where any fixed transportation facilities, real estate
13 or improvements are leased by more than one railroad, such
14 portion of the value shall be used by each railroad as the rental
15 paid by each shall bear to the rental paid by all lessees. The
16 income shall be multiplied by the fraction thus obtained to
17 determine the proportion to be used to arrive at the amount of
18 Missouri taxable income.

19 5. A corporation described in subdivision (3) of subsection
20 1 of section 143.441 shall include in its Missouri taxable income
21 one-half of the net income from the operation of a bridge between
22 this and another state. If any such bridge is owned or operated
23 by a railroad corporation or corporations, or by a corporation
24 owning a railroad corporation using such bridge, then the figures
25 for operation of such bridge may be included in the return of
26 such railroad or railroads; or if such bridge is owned or
27 operated by any other corporation which may now or hereafter be
28 required to file an income tax return, one-half of the income or

1 loss to such corporation from such bridge may be included in such
2 return by adding or subtracting same to or from another net
3 income or loss shown by the return.

4 6. A corporation described in subdivision (4) of subsection
5 1 of section 143.441 shall include in its Missouri taxable income
6 all income arising from all sources within this state. Income
7 shall include revenue from each telephonic or telegraphic service
8 rendered wholly within this state; from each service rendered for
9 which the only facilities of such corporation used are those in
10 this state; and from each service rendered over the facilities of
11 such corporation in this state and in other state or states, such
12 proportion of such revenue as the mileage involved in this state
13 shall bear to the total mileage involved over the lines of said
14 company in all states. The taxpayer may elect to compute the
15 portion of income from all sources within this state in the
16 following manner:

17 (1) The income from all sources shall be determined as
18 provided;

19 (2) The amount of investment of such corporation on
20 December thirty-first of each year in this state in telephonic or
21 telegraphic facilities, real estate and improvements thereon,
22 shall be divided by the amount of the total investment of such
23 corporation on December thirty-first of each year in telephonic
24 or telegraphic facilities, real estate and improvements. The
25 income of the taxpayer shall be multiplied by fraction thus
26 obtained to determine the proportion to be used to arrive at the
27 amount of Missouri taxable income.

28 7. From the income determined in subsections 2, 3, 4, 5 and

1 6 of this section to be from all sources within this state shall
2 be deducted such of the deductions for expenses in determining
3 Missouri taxable income as were incurred in this state to produce
4 such income and all losses actually sustained in this state in
5 the business of the corporation.

6 8. If a corporation derives only part of its income from
7 sources within Missouri, its Missouri taxable income shall only
8 reflect the effect of the following listed deductions to the
9 extent applicable to Missouri. The deductions are: (a) its
10 deduction for federal income taxes pursuant to section 143.171,
11 and (b) the effect on Missouri taxable income of the deduction
12 for net operating loss allowed by Section 172 of the Internal
13 Revenue Code. The extent applicable to Missouri shall be
14 determined by multiplying the amount that would otherwise affect
15 Missouri taxable income by the ratio for the year of the Missouri
16 taxable income of the corporation for the year divided by the
17 Missouri taxable income for the year as though the corporation
18 had derived all of its income from sources within Missouri. For
19 the purpose of the preceding sentence, Missouri taxable income
20 shall not reflect the listed deductions.

21 9. Any investment funds service corporation organized as a
22 corporation or S corporation which has any shareholders
23 resided in this state shall be subject to Missouri income tax
24 as provided in this chapter.

25 144.055. 1. As used in this section, the term "processing"
26 shall mean any mode of treatment, act, or series of acts
27 performed upon materials or food products to transform or reduce
28 such materials or products to a different state, thing, or

1 product, including treatment necessary to maintain or preserve
2 such processing by the producer at the location at which the food
3 product is produced.

4 2. In addition to all other exemptions granted under this
5 chapter, there is hereby specifically exempted from the
6 provisions of sections 144.010 to 144.525 and 144.600 to 144.761,
7 and from the computation of the tax levied, assessed, or payable
8 under sections 144.010 to 144.525 and 144.600 to 144.761,
9 electrical energy and gas, whether natural, artificial, or
10 propane, water, coal, and energy sources, or other utilities
11 which are purchased by a restaurant, cafeteria, fast food
12 restaurant, delicatessen, bakery, grocery store, convenience
13 store, or other similar facility engaged in selling prepared food
14 for consumption on or off the premises of such establishment and
15 ultimately consumed or used in the manufacturing, processing,
16 preparing, furnishing, compounding, or producing of food, or used
17 in research and development related to the manufacturing,
18 processing, preparing, furnishing, compounding, or producing of
19 food that is ultimately sold to customers at a restaurant,
20 cafeteria, fast food restaurant, delicatessen, bakery, grocery
21 store, convenience store, or other similar facility engaged in
22 selling prepared food for consumption on or off the premises of
23 the establishment.

24 3. The exemptions granted in this section shall not apply
25 to the local sales tax law as defined in section 32.085.